

FEB 23 1976

OFFICE OF THE CLERK
SUPREME COURT, U.S.

BUGARE HARRIS,)
PETITIONER-APPELLANT)
VS.)
JEROME H. VOICE)
WARDEN,)
STATE OF TENNESSEE,)
APPELLEE-RESPONDENT)

CIVIL NO.

73-6265

HERMAN DAVIS, WARDEN, RESPONDENT OF
CUSTODY

CAPTIONED

PETITIONER A WRIT FOR CERTIORARI

APPEALING

OF CASE NO. 1500-8749 FROM THE U.S. COURT OF APPEALS FOR THE 6TH CIRCUIT
COURT OF APPEALS, CINCINNATI, OHIO

MOTION

THE COURT TO PROCEED IN FORMA PAUPERIS

PETITIONER STATES EXHIBITS IN PETITION: EXHIBITS ATTACHED AS NO. 1, NO. 2, NO. 3,
NO. 4, NO. 5, NO. 6, NO. 7, NO. 8, NO. 9, NO. 10

STATE OF TENNESSEE

STATEMENTS OF FACTS

- 1) PET CARR DID LEGALLY APPEAL HIS CASE , NO. B334 , DAVIDSON COUNTY (CRIMINAL) COURT. THIS CASE WAS FILED AS CASE NO. 74-388-NA-CU, IN THE U.S. DISTRICT COURT, NASHVILLE, TENN.
- 2) THIS CASE, NO. 74-388-NA-CU, WAS DISMISSED BY U.S. JUDGE FRANK GREY, JR., DATE 9-5-1974.
- 3) THIS ORDER OF DISMISSAL IN THIS CASE NO. 74-388-NA-CU IS ATTACHED AND ENTERED AS EXHIBIT NO. 1, THE STATEMENT MADE IN THIS ORDER IS NOT UNDERSTANDABLE OR ADEQUATE. STATEMENT SUCH AS FOLLOWS:
 - A) PETITIONER DID STATE WHERE THIS CONVICTION OCCURED
 - B) PETITIONER DID STATE WHAT CASE NO. THIS WAS
- 4) PETITIONER DID CERTIFY BY MAIL THIS APPEAL OF CASE NO. B334, DAVIDSON COUNTY (CRIMINAL) COURT TO THE DISTRICT COURT, CERTIFICATION NO. 815916, DATE 7-15-74, BY THIS ORDER OF DISMISSAL THE COURT DID NOT RECEIVE THE FORM OR PETION IN THE SAME FORM AS IT WAS WHEN THE PETITIONER MAILED IT.
- 5) PETITIONER ENTERS EXHIBIT NO. 2 , CAPTIONED SWORN AFFIDAVIT, TO SHOW WHERE THE TIMELY NOTICE OF APPEAL WAS LEGALLY GIVEN TO AN AUTHORITYATIVE PERSON TO BE MAILED TO THE U.S. COURT.
- 6) PETITIONER ENTERS EXHIBIT NO. 3,4,5 TO THIS PETION. EXHIBIT NO. 4 SHOW WHERE A BRIEF

WAS RETURNED.. THIS BRIEF WAS CERTIFIED AND AN ADDITIONAL STAMP WAS PLACED ON THIS BRIEF BY ASSIGNED PRISON COUNSELOR, MR. WALLER. PETITIONERS PERSONAL RECEIPT SHOWS THE NO. 991656 AS THE CERTIFICATION NO. THIS BRIEF WAS NOT CERTIFIED AT ALL AND THE SUPPOSEDLY ADDITIONAL POSTAGE WAS NOT USED. PLAIN MAIL FRAUD BY THIS..PETITIONER DENIED DUE PROCESS OF LAW.

7) THIS ORDER OF DISMISSAL IN CASE NO. 75-254-NA-CU IS ACCORDINGLY THE SAME AS THE ORDER OF DISMISSAL IN CASE NO. 74-388-NA-CU, THIS CASE NO. 75-254-NA-CU ARISES ACCORDINGLY TO THE ORDER OF DISMISSAL IN CASE NO. 74-388-NA-CU. PETITIONER FILES THIS MOTION FOR A NEW TRIAL OR DISMISSAL IN CASE NO. 75-254-NA-CU CAUSE OF THE ORDER SUCH AS IT WAS ORDER IN CASE NO. 74-388-NA-CU. THEN WHEN THE ORDER WAS HANDED DOWN BY THE HONORABLE COURT IN CASE NO. 75-254-NA-CU THE SAME SITUATION HAPPENED OR OCCURED. THEY DIDN'T OR COULDN'T HAVE RECEIVED THE PETION IN THE FORM AS IT WAS SENT TO THE COURT, ACCORDINGLY.

8) PETITIONER WILL ENTER ORDER IN CASE NO. 75-254-NA-CU AS EXHIBIT NO. 6.

9) PETITIONER WILL ENTER THE DENIAL OF HIS NOTICE OF APPEAL IN CASE NO. 75-254-NA-CU AS EXHIBIT NO. 7.

10) PETITIONER WILL ENTER THIS SPECIFIC STATEMENT FROM MR. FRANK B. JARRELL, SECTION CHIEF, DIRECTOR-SUPPORT FOR THE POST-MASTER AT NASHVILLE, TENN. AS EXHIBIT NO. 8. NOTHING HAS BEEN HEARD FROM THIS STATEMENT LATER DATE.

11) EXHIBIT NO. 9 ENTER TO PETITIONED CAPTIONED. CERTIFICATE A PROBABLE CAUSE IN CASE NO. 75-254-NA-CU.

**** CONSTITUTIONAL RIGHTS VIOLATED ****

FILED IN CASES NO.'S 74-388-Na-CU AND 75-254-Na-CU.

- 1) PETITIONER REQUESTED TO BE TRIED IN A CIVILIAN SUIT INSTEAD OF A 'SC CALLED' PRISON UNIFORM. THIS RIGHT WAS DENIED WITHOUT REASON OR LEGAL GROUNDS. PETITIONER WAS TRIED IN A BLUE SHIRT, SIZE LARGE. PETITIONERS' SIZE IS SMALL... THIS SHIRT DID HAVE WHITE PAINT ON IT. TRIED IN BLUE PANTS, SIZE 36. PETITIONERS' SIZE IS 30... PETITIONER WAS NOT PERMITTED TO SHAVE THE DAY OF THE TRIAL. PETITIONER WAS GIVEN DOPE IN HIS FOOD THE MORNING OF HIS TRIAL BY GUARD HARDY.
- 2) PETITIONER WAS DENIED THE RIGHT TO MAKE A PUBLIC PHONE CALL DURING THE TIME HE WAS BEING BOOKED AND CHARGED.
- 3) PETITIONERS RIGHT FOR A FAST AND SPEEDY TRIAL WAS DENIED WITHOUT A LEGAL CAUSE OR REASON, SUCH AS FOLLOWS :
 - a) THE PETITIONERS TRIAL WAS DELAYED FOR THE REASON THAT THE EXAMINING PHYSICIAN WAS GOING TO BE OUT OF TOWN DURING THE TIME THE TRIAL WAS PREVIOUSLY SET. THE DEFENSE WAS WILLING AND REQUESTED THAT A STATEMENT FROM THE PHYSICIAN OR THE PHYSICIANS STUFF WOULD BE ACCEPTABLE IF THEY COULD PROCEED AS SCHEDULED. AT THE TIME THE COURT WOULD NOT ACCEPT THE REQUEST AND DELAYED THE TRIAL. BY THIS STATEMENT OR REPORT FROM THE EXAMINING PHYSICIAN OR HIS STUFF WOULD HAVE BEEN SUFFICIENT IN ANY COURT.

4) PETITIONER DIDN'T RECEIVE PROPER AND ADEQUATE COUNSELING FROM HIS COURT APPOINTED PUBLIC DEFENDERS, BY MEANS AS FOLLOWS :

- A) THE DEFENSE LAWYERS MADE NO KIND OF DEFENSE IN THIS CASE. THEY REFUSED TO EVEN TALK TO THE DEFENSE WITNESSES.
- B) NO COMMUNICATION BEFORE TRIAL WITH DEFENDANT BY ATTORNEY, BY MAIL OR IN PERSON.
- C) DELIBERATELY, UNLAWFULLY COMMUNICATED WITH STATE INFORMER BY ATTORNEYS OR DEFENSE ATTORNEY WITHOUT DEFENDANT KNOWING OF SUCH.
- D) DEFENSE ATTORNEY APPEALED THE CONVICTION WRONGFULLY, DELIBERATELY, UNLAWFULLY. BY THIS HE DEFEAMED HIMSELF OF HIS PROFESSION.
- E) THE DEFENSE ATTORNEY DELIBERATELY TOOK 23 DAYS OVER THE TIME THE LAW REQUIRED TO APPEAL THIS CASE FROM THE CRIMINAL COURT TO THE APPELLATE COURT WITHOUT REASONS, CAUSE, OR LEGAL GROUNDS.

CONCLUSION

BY THIS TYPE OF COUNSELING RECEIVED BY THE DEFENDANT, HE WAS CHARGED AND FAILED TO BE GRANTED A NEW TRIAL OR HIS APPEAL. BY THIS THE DEFENDANT WAS DENIED HIS INDIVIDUAL RIGHTS AND RESTRAINED OF HIS LIBERTY . BY THIS OR THE VIOLATION OF THE PETITIONERS CONSTITUTIONAL RIGHTS AS SHOWN HERE, THE DEFENDANT OR THE PETITIONER THINKS HE SHOULD BE ENTITLED TO A NEW TRIAL OR DISMISSAL OF SENTENCE FROM THE CONVICTIONS.

SWORN AFFIDAVIT

I, EUGENE HARRIS, MAKE OATH ON DATE 10-2-1976 THAT HE DID GIVE A SEAL AND
STAMPED LETTER WHICH ENCLOSED WITHIN IT WAS A NOTICE OF APPEAL IN CASE NO. 7A-382-NA-CU TO A ROBERT CHILDRESS, HEAD OF COUNSELING TO MAIL TO THE UNITED
STATES DISTRICT COURT, MIDDLE DISTRICT FOR TENNESSEE, AT NASHVILLE, TENN.

RESPECTFULLY SUBMITTED

Eugene Harris
EUGENE HARRIS/ EUGENE HARRIS

SWORN TO ME AND SUBSCRIBED BEFORE ME THIS DATE 18 OF

FEBRUARY, 1976.

Loren H. McPhee
NOTARY PUBLIC

MY COMMISSION EXPIRES Sept 25, 1977.

STATE OF TENNESSEE

Co. 7 Morgan

AFFIDAVIT OF POVERTY

I, EUGENE HARRIS, MAKE OATH THAT HE IS UNABLE TO PAY COST OF COMMENCEMENT UNDER SAID PETITION & WRIT FOR CERTIORARI AND UNABLE TO GIVE SECURITY. THEREFORE PETITIONER THINKS HE IS ENTITLED TO THE REDRESS HE SEEKS IN THIS CIVIL

CASE.

EUGENE HARRIS

I, EUGENE HARRIS, AM OF SOUND MIND AND LEGAL AGE.

EUGENE HARRIS

RESPECTFULLY SUBMITTED

EUGENE HARRIS / EUGENE HARRIS

WROTE TO ME AND SUBSCRIBED BEFORE ME THIS 18 DAY OF FEBRUARY, 1976

Karen W. McRae
NOTARY PUBLIC

MY COMMISSION EXPIRES 9/25/77

I, EUGENE HARRIS, HEREBY CERTIFY THAT ALL THIS CONTAINED INFORMATION IS TRUE TO THE BEST OF MY ABILITY, KNOWLEDGE, AND BELIEFS.

STATE OF TENNESSEE

EUGENE HARRIS

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAN 29 1978

JOHN P. HEHMAN, Clerk

EUGENE HARRIS,

Petitioner-Appellant,

v.

JIMMY H. ROSE, WARDEN,

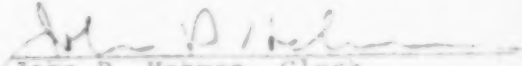
Respondent-Appellee

O R D E R

Upon consideration of petitioner's motion for a new trial and construing said motion for an application for a Certificate of Probable Cause pursuant to Rule 22 of the Federal Rules of Appellate Procedure,

It is ORDERED that the application be and it hereby is denied.

ENTERED BY ORDER OF THE COURT


John P. Hehman, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED FOR ENTRY

FILED IN U.S. DISTRICT COURT
CLERK

EUGENE HARRIS

]]

BY

Deputy Clerk

VS.

]]

NO. 75-388-NA-CV

JIMMY H. ROSE, Warden,
Tennessee State Penitentiary

]]

ORDER

The clerk will file the petition of Eugene Harris in forma pauperis. If the document submitted by the petitioner, an inmate of the Tennessee State Penitentiary, is a petition for the writ of habeas corpus, as this court assumes, it does not state any grounds for relief. In one of the previous cases brought by this petitioner, Harris v. Rose (N.D. 74-388-NA-CV), this court, on September 5, 1974, entered an order denying relief, which Order is apparently applicable to the petition at bar.

Incidentally, the petition at bar is entitled "Appeal of (Crim) Case No. B334 from the Courts of the State of Tennessee." He attaches a document showing that, in June, 1974, the Supreme Court of Tennessee denied his petition for a writ of certiorari to the Court of Criminal Appeals in Davidson County Case No. B-334. This is the same document referred to in the Order of September 5, 1974, in Case No. 7-186. A copy of that Order is attached hereto as an Appendix.

No meritorious grounds for relief being shown, the action must necessarily be DISMISSED. Judgment will enter accordingly.

Paul Ray

A P P E N D I X

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EUGENE HARRIS

}

VS.

}

NO. 74-388-NA-CV

JIMMY H. ROSE, Warden,
Tennessee State Penitentiary

}

O R D E R

The clerk will file the petition of Eugene Harris for the writ of habeas corpus in forma pauperis.

The document sent in by this petitioner is not intelligible. It does appear that he claims that his conviction, wherever it occurred, was void because he didn't have competent counsel or an impartial jury. There are other statements made in the petition which do not appear to have anything to do with a petition for writ of habeas corpus. It also appears that he is asserting that, on some appeal, the bill of exceptions was not timely filed. It does not appear in what action this occurred. There is attached to the petition a card from the Clerk of the Supreme Court of Tennessee showing that, in June, 1974, in the case of Eugene Harris v. State of Tennessee, a petition for the writ of certiorari was denied. Apparently, in whatever case this was, the appellate courts passed on it.

The court finds itself unable to say that the vague statements in the petition constitute any grounds for habeas corpus action. Accordingly, the petition is DENIED and the action DISMISSED.

John H. [Signature]
CLERK

JOHN P. HEHMAN
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO 45202

FEB 23 1975
OFFICE OF THE CLERK
SUPREME COURT, U.S.

October 30, 1974

Mr. Eugene Harris
218605
Station A Unit 1
Nashville, Tennessee

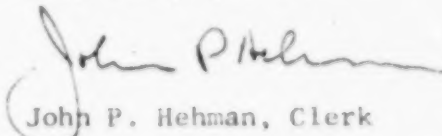
Dear Mr. Harris:

We are in receipt of a document which you apparently intend to be a brief in this Court.

Please be advised that the jurisdiction of this Court is limited to the consideration of appeals from final judgments entered in United States District Courts within this circuit. An appeal is perfected by filing a timely notice of appeal in the District Court in which the final judgment was entered.

Since it appears that we are without jurisdiction in this matter, I am returning herewith the document recently forwarded to us.

Very truly yours,


John P. Hehman, Clerk

JPH:dk

Enclosure

JOHN P. HEHMAN
CLERKUNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO 45202

January 31, 1975

Mr. Eugene Harris
#48605
Station A
Nashville, Tennessee 37203

Re: Eugene Harris v. State of Tennessee
(Undocketed Appeal)
Dist. Ct. No. 74-388-NA-CV, N.D. Tenn.,
Nashville Div.

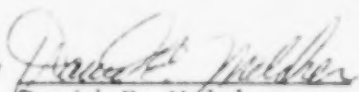
Dear Mr. Harris:

We have received your correspondence entitled "Motion for a New Trial or Dismissal." Please be advised that the jurisdiction of this Court is limited to the consideration of appeals from final judgments entered in the U.S. District Courts within this Circuit. An appeal is perfected by timely filing a notice of appeal with the District Court in which the final judgment was entered and from which the appeal is taken. Since in your matter a timely notice of appeal has not been filed, we are unable to respond to your request. Accordingly, I must return your correspondence herewith.

Very truly yours,

John P. Hehman, Clerk

By


David E. Melcher

Encl.

June 18, 1975

Mr. Eugene Harris
48605, Station "A"
Nashville, TN 37203

The matter mentioned in your letter of June 4, 1975 is being given appropriate attention by this office.

The return receipt for Certified Letter No. 991656 is enclosed.

Frank B. Jarrell

FRANK B. JARRELL
Sectional Center Director - Support

for Postmaster
Nashville, TN 37202

Enclosure

FRANK E. WILLIAMS
CLERK

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE 37203

November 13, 1975

Mr. John P. Hehman
Clerk
U. S. Court of Appeals
for the Sixth Circuit
Cincinnati, Ohio 45202

Re: Eugene Harris
v
Jimmy H. Rose, Warden
Tennessee State Penitentiary
Civil No. 75-254-NA-CV

Dear Mr. Hehman:

Enclosed is the certified Record of Application
for Certificate of Probable Cause in the above civil action.

Very truly yours,

FRANK E. WILLIAMS, CLERK

By: Joyce Merritt
Deputy Clerk

Enclosure

cc: (w/ Copy of Clerk's Certificate and Docket Entries)

Mr. Eugene Harris
Station A, West
Nashville, Tennessee 37203

Mr. Robert Morford, Acting Warden
Tennessee State Penitentiary
Nashville, Tennessee 37203

Mr. Ray Ashley
Attorney General
State of Tennessee
Supreme Court Building
Nashville, Tennessee 37219

CLOSED

PLAINTIFFS

DEFENDANTS

EUGENE HARRIS

JIMMY H. ROSE, Warden
Tennessee State Penitentiary

CAUSE

Petition for writ of habeas corpus; filed in forma pauperis

ATTORNEYS

Plaintiff:

Eugene Harris (Pro Se)

Defendant:

Ray Ashley, Attorney General
State of Tennessee
Supreme Court Building
Nashville, Tennessee 37219

FILING RECEIVED

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FILED

7/16/75

7/16/75

UNITED STATES DISTRICT COURT DOCKET

BEST COPY AVAILABLE

1/16/75	Entered: Order the clerk will file petition in forma pauperis; no meritorious grounds for relief being shown, the action must necessarily be dismissed. Judgment will enter accordingly,. Copy to petitioner and State Attorney General.
7/16/75	Entered: Judgment...judgment of the court that the action be dismissed. Copy to petitioner and State Attorney General.
1/16/75	Filed: Petition for writ of habeas corpus. (Copy to State Atty. Gen.)
5-5-75	Filed: Notice of Appeal.
5-5-75	Entered: Treating the document submitted as a motion for leave to proceed in forma pauperis with an appeal and for a certificate of probable cause, it must be DENIED. Any appeal would be frivolous and without merit. It is so ORDERED. Copies plaintiff and Ray Ashley, Atty. General.
11-13-75	Certified Application for a Certificate of Probable Cause mailed to the 6th Circuit Court of Appeals, copies of clerk's certificate and docket entries to attorneys of record and Eugene Harris

A TRUE COPY

WILLIAM
DISTRICT

J. J. [Signature]

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EUGENE BARRIS)	
Petitioner-Appellant)	
)	
)	
)	
v.)	CASE NO. 75-254-NA-CV
)	
)	
JIMMY H. ROSE, Warden,)	
Tennessee State Penitentiary)	
Respondent-Appellee)	

CLERK'S CERTIFICATE AND INDEX OF RECORD

I, Frank E. Williams, Clerk of the United States District Court for the Middle District of Tennessee, do hereby certify that the papers transmitted herewith and enumerated below, comprise the Application for a Certificate of Probable Cause by a Circuit Judge pursuant to the provisions of Section 22(G) of the Rules of Appellate Procedure, as Amended through March 15, 1975, in the above-entitled action:

1. Order dated July 16, 1975.
2. Petition for Writ of Habeas Corpus in forma pauperis filed July 16, 1975.
3. Order of Judgment entered July 16, 1975.
4. Notice of Appeal by Petitioner filed August 5, 1975.
5. Order dated August 5, 1975, denying the Application by Petitioner for Leave to Proceed in forma pauperis with an appeal and for a Certificate of Probable Cause.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of aforesaid Court at Nashville, Tennessee, this 10th day of November, 1975.

FRANK L. WILLIAMS, CLERK

BY:


Deputy Clerk

FOR PETITIONER-APPELLANT:

Mr. Eugene Harris
Station A, West
Nashville, Tennessee 37203

FOR RESPONDENT-APPELLEE:

Mr. R. A. Ashley, Attorney General
State of Tennessee
Supreme Court Building
Nashville, Tennessee 37219

JOHN P. HEHMAN
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO 45202

FEB 23 1976
OFFICE OF THE CLERK
SUPREME COURT, U.S.

February 12, 1976

75-6265

Mr. Eugene Harris #48605
Brushy Mountain Penitentiary
Petree, Tennessee 37845

Re: Case No. 75-8249 - Eugene Harris v.
Jimmy Rose

Dear Mr. Harris:

We have received your handwritten document
entitled "Notice of Appeal" in the above styled case.

If it is your intent to apply for a writ
of certiorari your document must be submitted to the
Supreme Court of the United States. Accordingly, we
are returning your document to you herewith.

Very truly yours,

John P. Hehman
Clerk

JPH:pe

RECEIVED

FEB 11 1976

JOHN P. HEHMAN, Clerk

EUGENE J. JAMES
APPELLANT
vs.
MICHIGAN STATE BAR

UNITED STATES
DISTRICT COURT
FOR THE EAST DISTRICT
OF MICHIGAN

WHEREFORE IS A NOTICE
OF APPEAL IN
MICHIGAN STATE BAR
vs. EUGENE J. JAMES
CASE NO. 11-254, M.C.

APPEAL PETITIONING THE
UNITED STATES DISTRICT
COURT.

U.S. DISTRICT COURT FOR THE EAST DISTRICT
OF MICHIGAN

ENCLOSE A

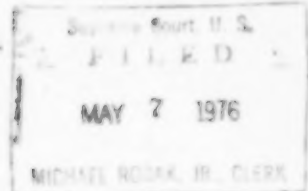
SUBORDINATE

STATE OF MICHIGAN

~~THE COURT HAS~~

By: [Signature]
Attorney

BEST COPY AVAILABLE



IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

EUGENE HARRIS,)	
Petitioner,)	
)	
v.)	NO. 75-6265
)	
JIMMY H. ROSE, Warden,)	
Respondent.)	

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ALEX B. SHIPLEY, JR.
Assistant Attorney General
420 Supreme Court Building
Nashville, Tennessee 37219
(615) 741-2865

OF COUNSEL:

R. A. ASHLEY, JR.
Attorney General

OFFICE OF THE
ATTORNEY GENERAL OF TENNESSEE
SUPREME COURT BUILDING
NASHVILLE, TENNESSEE 37219

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MAY IT PLEASE THE COURT:

The respondent, Jimmy H. Rose, Warden, in opposition to the Petition for Writ of Certiorari in the instant case, would respectfully suggest that the Writ should be denied.

OPINIONS BELOW

The Order of the United States of Appeals for the Sixth Circuit denying a Certificate of Probable Cause filed on 29 January 1976 is attached as Appendix A. The Order of the United States District Court for the Middle District of Tennessee, Nashville Division, denying the petitioner's Motion for Leave to Proceed in Forma Pauperis, with an appeal and for a Certificate of Probable Cause filed 5 August 1975 is made Appendix B. The Order of the United States District Court for the Middle District of Tennessee, Nashville Division, dismissing the Petition for Writ of Habeas Corpus, is made Appendix C, as is a prior Order of that Court incorporated by reference in the Order of 16 July 1975.

The Order of the Supreme Court of Tennessee denying a Petition for Certiorari arising from the direct appeal of the conviction here under attack is made Appendix D.

STATEMENT OF THE CASE

This case was initiated by a pleading filed in the United States District Court for the Middle District of Tennessee treated as a petition for habeas corpus and dismissed without the requirement of a response and without an evidentiary hearing. The District Court then denied a motion for appeal in forma pauperis and denied a certificate of probable cause. The Court of Appeals likewise denied a certificate of probable cause.

QUESTION PRESENTED FOR REVIEW

The matter to be reviewed on this petition is whether the pleading filed in the District Court warranted a response and an evidentiary hearing.

ARGUMENT

The respondent submits that the action of the District Court in dismissing the pleading was imminently appropriate, as was that of the Court of Appeals in denying a certificate of probable cause.

The initial pleading did not assert the exhaustion of remedies available under state law save that the Supreme Court of Tennessee had denied relief on direct appeal. Available to the petitioner were procedures under the Post Conviction Procedure Act. Tenn. Code Ann. §§ 40-3801, et seq.

The provisions of 28 U.S.C. § 2254 require that an application for a writ of habeas corpus shall not be granted unless it appears that the person seeking the writ has exhausted available state remedies. Under Tennessee law, a post conviction procedure is available to assert constitutional infirmities occurring during a criminal trial. See e.g. Nelson v. George, 399 U.S. 224 (1970); Irvin v. Dowd, 359 U.S. 394 (1959); Pitchess v. Davis, ___ U.S. ___, 95 S.Ct. 1748 (1975).

Further, federal habeas corpus relief is not to be utilized as a substitute for appeal. Fay v. Noia, 372 U.S. 391 (1963).

Even given the liberal reading of a prisoner's petition pro se, the petition in the instant case failed to state sufficient facts necessary to warrant an evidentiary hearing. Darr v. Burford, 339 U.S. 200 (1950); c.f. Machibroda v. United States, 336 U.S. 487 (1961).

As the United States Court of Appeals for the Second Circuit indicated in United States ex rel. Cummings v. McMann, 429 F.2d 1295 (2nd Cir. 1970):

In order to merit an evidentiary hearing on a petition for habeas corpus, the petitioner must present more than simple conclusory allegations. He must raise an issue of disputed fact, which fact, if true, might establish his claim for relief. [Citations omitted.] At page 1296.

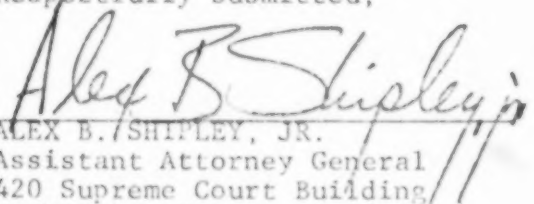
Further, the Great Writ is not a device for review of state convictions for the mere asking. In Bernier v. Moore, 441 F.2d 395 (1st Cir. 1971), the court aptly stated that:

The fundamental purpose of habeas corpus would be undermined if the writ were prostituted by holding it out as available upon mere "notice" or token pleading, without any showing of entitlement. We do not accept the burden, upon ourselves and other litigants alike that would follow if state defendants, simply by making conclusory allegations, could require district judges -- and inevitably, on appeal, three circuit judges -- to read the records and transcripts of their state trials. Habeas corpus is a special proceeding to right wrongs, not a routine procedure to search for them, nor a means of requiring the federal courts to review, as a matter of course, state proceedings. At page 396.

CONCLUSION

For the foregoing reasons it is submitted that the petition for certiorari should be dismissed.

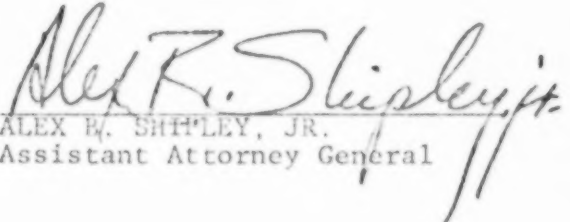
Respectfully submitted,


ALEX B. SHIPLEY, JR.
Assistant Attorney General
420 Supreme Court Building
Nashville, Tennessee 37219
(615) 741-2865

R. A. ASHLEY, JR.
Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been forwarded to Mr. Eugene Harris, 48605, Brushy Mountain Penitentiary, Petros, Tennessee 37845, this 5th day of May, 1976.


ALEX B. SHIPLEY, JR.
Assistant Attorney General

No. 75-8249

FILED

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAN 29 1975

JOHN P. HEHMAN, Clerk

EUGENE HARRIS,

Petitioner-Appellant,

v.

JIMMY H. ROSE, WARDEN,

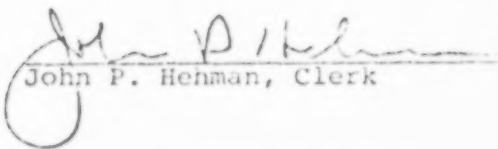
Respondent-Appellee

O R D E R

Upon consideration of petitioner's motion for a new trial and construing said motion for an application for a Certificate of Probable Cause pursuant to Rule 22 of the Federal Rules of Appellate Procedure,

It is ORDERED that the application be and it hereby is denied.

ENTERED BY ORDER OF THE COURT


John P. Henman, Clerk

App. A.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED
4:30 P.
August 5, 1975
D
BY *[Signature]*

EUGENE HARRIS

]

VS.

]

NO. 75-254-NA-CV

JIMMY B. ROSE, Warden,
Tennessee State Penitentiary

]

ORDER

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ALREADY
ON FILE
GROSS
11/1/75

By Order entered July 16, 1975, the court found the petition for habeas corpus submitted by this inmate of the Tennessee State Penitentiary to be without merit, in that it stated no grounds for habeas corpus relief.

Petitioner has now submitted what he designates as a Notice of Appeal. Treating the document submitted as a motion for leave to proceed in forma pauperis with an appeal and for a certificate of probable cause, it must be DENIED. Any appeal would be frivolous and without merit. It is so ORDERED.

[Signature]
CHIEF JUDGE

App. B.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANK E. WILLIAMS
Clerk

BY [Signature]
Deputy Clerk

EUGENE HARRIS

]

VS.

]

NO. 75-24-NA-CV

JIMMY H. ROSE, Warden,
Tennessee State Penitentiary

]

ORDER



The clerk will file the petition of Eugene Harris in forma pauperis. If the document submitted by the petitioner, an inmate of the Tennessee State Penitentiary, is a petition for the writ of habeas corpus, as this court assumes, it does not state any grounds for relief. In one of the previous cases brought by this petitioner, Harris v. Rose (M.D. 74-388-NA-CV), this court, on September 5, 1974, entered an Order denying relief, which Order is apparently applicable to the petition at bar.

Incidentally, the petition at bar is entitled "Appeal of (Crim) Case No. B334 from the Courts of the State of Tennessee." He attaches a document showing that, in June, 1974, the Supreme Court of Tennessee denied his petition for a writ of certiorari to the Court of Criminal Appeals in Davidson County Case No. B-334. This is the same document referred to in the Order of September 5, 1974, in Case No. 74-388. A copy of that Order is attached hereto as an Appendix.

No meritorious grounds for relief being shown, the action must necessarily be DISMISSED. Judgment will enter accordingly.

[Signature]
CLERK OF COURT

App C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

11-11-74

P. [Signature]

EUGENE HARRIS

]

VS.

]

NO. 74-388-NA-CV

JIMMY H. ROSE, Warden,
Tennessee State Penitentiary

]

ORDER

The clerk will file the petition of Eugene Harris for the writ of habeas corpus in forma pauperis.

The document sent in by this petitioner is not intelligible. It does appear that he claims that his conviction, wherever it occurred, was void because he didn't have competent counsel or an impartial jury. There are other statements made in the petition which do not appear to have anything to do with a petition for writ of habeas corpus. It also appears that he is asserting that, on some appeal, the bill of exceptions was not timely filed. It does not appear in what action this occurred. There is attached to the petition a card from the Clerk of the Supreme Court of Tennessee showing that, in June, 1974, in the case of Eugene Harris v. State of Tennessee, a petition for the writ of certiorari was denied. Apparently, in whatever case this was, the appellate courts passed on it.

The court finds itself unable to say that the vague statements in the petition constitute any grounds for habeas corpus action. Accordingly, the petition is DENIED and the action DISMISSED.

[Signature]

MB 49/467

EUGENE HARRIS

Davidson County

NO. B-334 Below

vs.

STATE OF TENNESSEE

Writ Denied.

Upon consideration of the petition for a writ of certiorari herein to the Court of Criminal Appeals, Middle Division at Nashville, the said petition is hereby denied.

The Clerk of this Court will issue duly certified copies of this Order to the Clerk of the Criminal Court of Davidson County, the Sheriff of Davidson County, and the Warden of the State Penitentiary. 6/17/74.

Office of CLERK OF THE SUPREME COURT

FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE

I, RAMSEY LEATHERS, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the ORDER DENYING PETITION FOR WRIT OF CERTIORARI of said Court, pronounced at its December term, 1973, in case of EUGENE HARRIS against STATE OF TENNESSEE as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court at office in the Supreme Court Building at Nashville, on this, the

5th day of May, 1976

Ramsey Leathers, Clerk
By _____, Deputy Clerk